IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.919 OF 2006

1. Jairaj Kantilal Sonawala & anr. Petitioners
vs.
1. The Chief Commissioner of Income Tax City-2, Thane & ors. Respondents

Mr.Charanjeet Chandrapal for the petitioners.

Mr.Ashok Kotangale for the respondents.

CORAM : H.L.GOKHALE &
V.R.KINGAONKAR,JJ.

DATED : 24th July, 2006

P.C.

Heard Mr.Charanjeet Chandrapal, counsel for the petitioners and Mr.Ashok Kotangale, counsel for the respondents.

2. The petitioners seek to challenge the order passed by the Commissioner of Income-tax, Pune and submits that the order declining to waive the interest under Section 234B of the Income Tax Act, 1961 is bad. Section 234B entitles the department to levy interest for defaults in payment of advance tax. Under the circular of CBDT, interest can be waived or reduced provided the return was filed voluntary and the tax portion of the demand on their assessed income is paid by the assessee. Mr.Chandrapal submits that it is not the income assessed, but it has to be on the basis of the return of

income and he relied upon the judgment of the Apex Court in the case of Commissioner of Income-Tax & ors. v. Ranchi Club Ltd., **247 (2001) ITR 209.** That is one aspect of the matter, but basically the return has to be filed voluntarily. It is only after the attachment of the flat of the petitioners that the return has been filed and the taxes have been paid. This being the position, the petitioners cannot claim waiver of interest levied under Section 234B of the Income Tax Act. The petition is, therefore, dismissed.

(H.L. GOKHALE, J.)

(V. R. KINGAONKAR,J.)